IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Fist Appeal From Order No. 550 of 2001
(Old No.993/1995)

M/s Oriental Insurance Company Ltd.
Through its Assistant Manager (Legal)
16-A M.G. Marg, Civil Lines
Allahabad – 211 001 ... Appellant

Vs

1. Smt. Javitri Devi Widow of Late Sri Hira Lal
   R/o Village Rampura
   Rudrapur
   District Nainital
2. Om Prakash S/o Sri Hansraj
   R/o Village Mukrampur
   Tehsil Gadarpur
   District Nainital ... Respondents

Sri Tanveer Alam Khan, learned counsel for the appellant
Sri D.N. Sharma, learned counsel for the respondent
Sri Vipul Sharma, learned counsel for the respondent

Hon'ble B.C. Kandpal, J.

This appeal under Section 110-D of the Motor Vehicle Act, 1939 has been filed by the insurer of the vehicle in question against the judgment and award dated 26.05.1995 passed by the M.A.C.T./IIIrd Additional District Judge, Nainital in M.A.C.P. No. 205 of 1990 between Smt. Javitari Devi Vs Om Prakash & others.

2. Brief facts giving rice to this appeal are that on 23.06.1988 at about 02:30 p.m. the deceased Hira Lal was travelling in tempo No. URU/5968. At the time of the accident the deceased was going from Rudrapur to his village at Rampur. When the said tempo reached near Bajpur Doraha, it met with an accident. The accident occurred due to rash and negligent driving of its driver. In the said accident, the deceased – Hira Lal received grievous injuries. He was immediately rushed to the Government Hospital at Bajpur

where he was admitted for two days and thereafter he was referred to Rampur Hospital for better treatment. Due to grievous injuries, Hira Lal died on 23.08.1988. According to the claimant, the deceased was 60 years of age at the time of the accident and was earning Rs. 1500/- from a betel shop. Therefore, he filed the claim petition before the Tribunal concerned for Rs. 1,50,000/- as compensation.

3. Opposite parties contested the claim petition of the claimant and filed their written statement denying the contents of the claimant. According to Omprakash – owner of the vehicle in question has submitted that at the time of the accident, the vehicle in question was insure with Oriental Insurance Company therefore, it is the liability of the Insurance Company for compensation. The Oriental Insurance Company has also filed its written statement admitting this fact that at the time of the accident the vehicle in question was insured with them. On the other hand Insurance Company has submitted, if the accident occurred due to rash and negligent of its driver, then the liability of Insurance Company is only for Rs. 15,000/-.

4. On the basis of the pleadings of the parties, the Tribunal has framed following issues:-

1. Whether the deceased Hari Lal received serious injuries on 23.06.1988 at about 02:30 p.m. due to rash and negligent driving of the driver of tempo No. URU 5968?
2. To what amount of compensation, if any the claimant is entitled to get, and against whom?

5. Both the parties adduced their evidence in support of their case. The trial court after considering the entire evidence available on record and hearing learned counsel for the parties awarded an amount of Rs. 75,000/- as compensation to the claimant from the date of filing the petition till the date of actual payment vide impugned judgment and award dated 26.05.1995.

6. Feeling aggrieved by the aforesaid judgment and order dated, the appellant/insurer preferred an appeal before the Allahabad High Court which has been transferred to this Court after creation of separate State.

7. Heard Sri Sri Tanveer Alam Khan, learned counsel for the appellant, Sri D.N. Sharma, learned counsel for the respondent, Sri Vipul Sharma, learned counsel for the respondent and perused the record.

8. Learned counsel for the appellant has submitted before this Court that the short point involved in this appeal is that as to what is the limit of the liability of the Insurance Company under the provisions of the Motor Vehicle Act, 1939. He has submitted that in view of the provision of Section 95 (b) sub clause ii, the liability of the Insurance Company for each passenger would be upto the limit of Rs. 15,000/-.

9. The impugned judgment and award passed by the Tribunal is not sustainable in the eye of law as far as the liability has been fixed against the Insurance Company for the payment of the amount of compensation awarded by the Tribunal. It appears that the Tribunal was guided by the provision of Section 95(b) sub section (ii) of the Act which is not applicable at all in the present case as the offending

vehicle is not a goods vehicle. Further the limit of Rs. 50,000/- has been introduced in the Act for a third party not for the passenger travelling in the offending vehicle.

10. In the instant case, the deceased was travelling in the offending vehicle; therefore, he was travelling in the capacity of a passenger. Hence, in view of the provision of Section 95 (b) sub clause (ii), the liability of the Insurance Company in any case cannot exceed to Rs. 15,000/- in this case.

11. It is not disputed that the offending vehicle was insured with the Insurance Company, therefore, the appellant is entitled to pay the amount of compensation upto an extend of Rs. 15,000/- only. However, for rest of the amount it is not made clear that the owner of the vehicle in question is liable to pay the same to the claimant.

13. For the reasons stated above, the appeal is partly allowed. The impugned judgment and award passed by the Tribunal is modified to the extent that the appellant is liable to pay the amount of compensation upto the tune of Rs. 15,000/- including the rate of interest indicated in the impugned judgment and award. Rest of the amount of compensation is payable by the owner of the vehicle, including the rate of interest indicated in the impugned judgment and award.

13. Accordingly, the appeal is partly allowed.

(B.C. Kandpal, J.)

20.12.2006
ASWAL